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OCC 66-0805

7 APR 1966

MEMORANDUM FOR THE RECORD

SUBJECT: Heine v. Raus Case

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1. I met today with Messrs. [redacted] and Mr. Kevin Maroney, of the Department of Justice, concerning latest developments in the Heine v. Raus case. We discussed the hearing set for 14 April at 10 a.m., at which time Mr. Helms' latest affidavit will be introduced and Mr. Maroney will speak as the Government representative, stating that Raus is precluded from making further disclosures relating to the case without specific authorization by proper Government officials. Maroney will write the judge today with copies to the opposing attorneys, stating that he will appear for the Government in this case at the hearing on the 14th. He will also point out that in preparation of the affidavit, parentheses were inadvertently omitted from reference to Section 403(d) of Title 50 of the Code. The plan is to have a member of OGC present at the hearing.

2. We discussed the question of employer-employee relationship in asserting absolute immunity as a defense to this suit. [redacted] contention is that the only requirement to establish employment for purposes of being able to assert immunity is the existence of the authority for the Government to order the individual to perform certain acts on the Government's behalf and the performance of those acts within the scope of such order. Since the Deputy Director has sworn to the existence of such order and compliance therein there should be no further issue in regard to Raus's employment by the Agency when he made the alleged slanderous statements.

3. We also discussed what Raus might disclose of material matters not already revealed through his pleadings in view of Paragraph 11 of the Director's affidavit. Prettyman took the view that any matter which can be considered to be material, even if it pre-existed

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his employment with the Agency, may not be revealed by the defendant, in view of Paragraph 11, without specific authorization by CIA officials. Thus, for example, even the date upon which Raus became employed by BPR, although apparently innocent in appearance, could not be revealed without Agency approval provided it were material to the suit. Of course, if it were immaterial, defendant's counsel could object on that ground itself. [ ] then took the view that all necessary facts will have been before the court upon introduction of the Deputy Director's latest affidavit. If the court refuses to accept this approach and attempts to open the hearing to further interrogation of Raus, he will advise Raus to make no disclosures whatsoever without express authorization of the Agency.

4. With respect to the 12 April scheduling for interrogatories of the defendant, it was [ ] understanding with Raskauskas that this would be postponed for a week. [ ] was going to call Raskauskas to have it postponed until after the hearing in that the hearing might make it unnecessary.

5. In accordance with Judge Thomsen's letter of 4 April addressed to Raskauskas, Stanford, [ ] and [ ] the court will "hear anything which either side wishes to add to the material which has been heretofore submitted, including the points and authorities filed by the plaintiff on April 1." In his Motion to Strike Motion to Amend Answer, plaintiff has alleged undue delay, bad faith, dilatory motives, and undue prejudice to the plaintiff. We discussed the issue of undue delay and agreed that the Director's decision first to deny the defense of privilege and later to allow such defense based upon employment with the Government cannot be reviewed in view of his determination that further revelations of material facts in this case would be contrary to the national interest.

6. The plaintiff's attorneys have made it clear to [ ] and [ ] that they intend to take this case all the way to the Supreme Court if necessary. They are obviously looking then for issues for appeal and will hold closely to Federal procedure.

(Signed) [ ]



Assistant General Counsel

cc: [ ]

J/SR

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